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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reorganization of Parts 1, 2, 21 and 94 of)
the Rules to Establish a New Part 101) WT Docket No. 94-148
Governing Terrestrial Microwave Fixed)
Radio Services)
) DOCKET FILE COPY ORIGINAL

Comments of AirTouch Communications, Inc.

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To: The Commission

COMMENTS

AirTouch Communications, Inc. ("AirTouch"), by its attorneys,
hereby submits these Comments in response to the Notice of Proposed
Rulemaking released by the Commission on December 28, 1994.¹

INTRODUCTION AND SUMMARY

In this proceeding, the Commission proposes to bring uniformity
to the common carrier (Part 21) and private operational-fixed (Part 94)
microwave service rules, and to consolidate them in newly proposed Part 101.
The Commission also proposes to streamline the rules, where appropriate, to
allow the microwave industry to operate more efficiently, maximize use of the

¹ Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to
Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio
Services, Notice of Proposed Rulemaking, WT Docket No. 94-148
(released December 28, 1994) ("Notice").

microwave spectrum, and reduce the burden on the Commission's resources.

The comments provided below are intended to assist the Commission in its efforts to achieve these worthwhile objectives.

As discussed in detail below, AirTouch supports the elimination of common carrier application showings that are not essential to the processing and grant of applications, but notes that the corresponding questions on the application form should also be eliminated. Also, AirTouch seeks clarification of certain aspects of the rules governing (1) the dismissal and return of microwave applications (Section 101.39); and (2) modifications made without prior Commission approval (Section 101.61). AirTouch also proposes a schedule for renewing common carrier microwave authorizations that will simplify the process for licensees and the Commission.

With regard to the proposed rules governing the construction and operation of microwave stations, AirTouch supports the adoption of rules allowing operation pursuant to blanket authority. Also, the new rules should make clear that both common carrier and private operational-fixed microwave licensees are exempt from station identification requirements.

With regard to the proposed rules governing assignments and transfers, AirTouch supports an extended period in which to consummate transactions, and elimination of the newly imposed requirement that microwave stations cannot be assigned or transferred prior to completion of

construction. Finally, the annual FCC Form 430 filing requirement should be eliminated.

A. Rules Applicable to the Application Process

1. Necessary Changes to FCC Form 494

For the reasons articulated in the Notice, AirTouch supports the elimination of common carrier application showings that are not essential to the processing and grant of applications, including elimination of the public interest showing (Sections 21.13(a)(4) and 21.706(a));² financial showing (Sections 21.13(a)(2) and 21.17); requirement to submit a copy of any franchise or other authorization when required by local law (Section 21.13(f)); station control showing (Section 21.13(g)); station maintenance procedures and information showing (Section 21.15(e)); vertical profile sketch (Section 21.15(c)); and site availability showing (Section 21.15(a)).

The Commission should ensure, however, that the corresponding questions on the application form (FCC Form 494) are modified to incorporate these rule changes. Otherwise, applicants will still be required to answer those

² AirTouch agrees with the Commission's tentative assessment that the public interest will generally be served by granting applications in these services that meet all the Commission's other rules and requirements. Notice at 5. As further stated in the Notice, the Commission can still request a separate public interest showing, if necessary. Id. AirTouch submits that this approach satisfies the Commission's statutory obligations.

questions on the form despite elimination of the corresponding rules.³ The following is a list of FCC Form 494 questions that should be modified or eliminated:

- site availability showing - Item 12;
- vertical profile sketch - Item 14(a);
- station maintenance procedures and information - Item 18;
- station control showing - Item 23;
- requirement to submit a copy of any franchise or other authorization when required by local law - Item 24.

2. Proposed Section 101.39 (Dismissal and Return of Applications)

Proposed Section 101.39 sets forth the parameters governing the dismissal and return of applications for both private operational-fixed and common carrier microwave stations. AirTouch requests clarification on two points with regard to Section 101.39(b).

First, Section 101.39(b) provides that "[a]pplicants for stations licensed under Sub-part H (Private Operational-Fixed Microwave Service) may request the return of an application for correction without dismissal." The meaning of the phrase, "return of an application *for correction*" (emphasis added) is unclear when read together with Section 101.29, which identifies extensive

³ Under Section 21.13(a)(3) (and proposed Section 101.19(a)(3)), applicants must submit all information required by application forms.

procedural requirements for amending an application. It would be helpful if the Commission could clarify the distinction between a request to correct an application and a request to amend an application. If the two terms are not interchangeable, the Commission should explain what procedures are necessary to submit a correction after the request for return of the application.

Second, the Commission should also clarify whether, under Section 101.39(b), both common carrier and private operational-fixed service applicants may request the return of an application for correction without dismissal. As written, this provision refers specifically to applicants for private operational-fixed microwave service, but there is no comparable provision for common carrier services. There is no apparent reason why common carrier and private microwave licensees should be subject to inconsistent procedures with respect to the withdrawal of applications. Accordingly, AirTouch requests that Section 101.39(b) be revised to specifically include common carrier services.

3. Proposed Section 101.61 (Certain Modifications Not Requiring Prior Authorization)

AirTouch requests clarification that, under proposed Sections 101.61(b)(3) and 101.61(d), carriers may notify the Commission of modifications not requiring prior approval, or erroneous information on a license, by filing only an FCC Form 494 without an associated FCC Form 494A. Although current Section 21.42 and the proposed sections only require

the Form 494, AirTouch has received conflicting instructions from the Commission's staff and, at times, has been instructed to file Form 494A in conjunction with Form 494 when notifying the Commission of permissible modifications/corrections. Thus, AirTouch requests confirmation that only the Form 494 is required in these situations.

4. Renewal of Microwave Authorizations

Current Section 21.45(a) states that Part 21 authorizations are issued for a period not to exceed ten years, and that expiration of authorizations occurs on specific dates (contained in the rules) in the year of expiration. Proposed Section 101.67 states that "licenses for stations authorized under this Part will be issued for a period not to exceed 10 years from date of grant," but does not include the specific date information currently contained in Section 21.45(a).

This rule change is causing confusion in the industry because the "date of grant" is not always evident. Moreover, even when this issue is clarified, the new rule will require licensees to file perhaps hundreds of separate renewals on a staggered basis, creating a mountain of paperwork and substantially increasing the Commission's processing burden.

To remedy this problem, AirTouch offers the following proposal. First, all microwave licensees that obtained license renewals in early 1991 should be given 10 years from the date of the Public Notice granting those

renewals in which to file renewal applications for all of their microwave authorizations.⁴ Since the 1991 renewals were not all granted at the same time, the 10 year expiration date will be staggered somewhat as to these licensees. Microwave licensees that obtained their first authorization after the 1991 renewal grants should be given 10 years from the date of Public Notice announcing grant of their first authorization in which to file their next set of renewals for all of their microwave authorizations.

Adoption of this proposal would serve three important purposes. First, confusion surrounding the appropriate "date of grant" will be remedied. Second, the process for licensees will be substantially simplified since only one renewal filing, listing all microwave authorizations held by the licensee, will be required in each 10 year period, rather than perhaps hundreds of separate renewal applications filed on a staggered basis. Finally, the Commission's interests will be served in two respects: its processing burden will be significantly reduced and it will receive renewal applications on a staggered basis rather than receiving all of the industry's applications on the same day.

⁴ This renewal date would also apply to licensees, such as AirTouch, which subsequently acquired microwave licenses that had been renewed in 1991.

B. Rules Relating to the Construction and Operation of Microwave Stations

1. Rules Allowing Operation Pursuant to Blanket Authority are Needed

Proposed Section 101.5(a) prohibits the construction or operation of a microwave station prior to receipt of a "proper station authorization."⁵ This rule is inconsistent with the comparable rule proposed in CC Docket No. 93-2⁶ (Section 21.43) which permits pre-authorization construction under specified conditions. AirTouch submits that proposed rule Section 21.43 is preferable to Section 101.5(a), but neither rule goes far enough.

One of the primary objectives in this proceeding is "to allow the microwave industry to operate as efficiently as possible without being hampered by obsolete regulations."⁷ Proposed Sections 21.43 and 101.5(a) would undermine these objectives. AirTouch requests, instead, that the Commission adopt the blanket licensing system proposed by BellSouth in CC

⁵ Proposed Section 101.37(c) provides that "no application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application. . . ."

⁶ Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Service, Notice of Proposed Rulemaking, CC Docket No. 93-2, 8 FCC Rcd. 1112 (1993) ("Part 21 Rewrite Proceeding").

⁷ Notice at 4.

Docket No. 93-2.⁸ Under the BellSouth proposal, an initial application is filed and subjected to full qualifications review, which would, upon grant, allow the licensee to construct and initiate operation of new microwave facilities. These "blanket" applications would be placed on public notice and subject to petitions to deny in accordance with 47 U.S.C. § 309. Licensees obtaining a blanket authorization could then construct and operate facilities (subject to certain conditions). Upon commencement of operations, a form would have to be filed with the Commission notifying it of the new or modified facilities. Such notifications would be put on public notice for informational purposes, and the FCC would retain the right to reject the notification and order cessation of operations.

This proposal is consistent with the notice requirement of Section 309 for two reasons. First, the "blanket" application is subject to the full 30-day notice period, giving interested parties the opportunity to challenge the applicant's qualifications. Interested parties will also have the requisite period of time to oppose the construction and operation of individual facilities during the frequency coordination phase. AirTouch submits that adoption of this proposal will be beneficial to microwave licensees and the Commission without compromising the legitimate concerns of interested parties.

⁸ See BellSouth Comments in CC Docket 93-2 at 3-4.

At a minimum, AirTouch urges the Commission to modify proposed Section 101.5 to ensure that both common carrier and private operational-fixed microwave licensees are subject to the same regulatory requirements.⁹ Elimination of the disparity contained in Section 101.5 is consistent with the Commission's stated goal of consolidating and conforming the common carrier and private operational-fixed microwave service rules.

2. Section 101.213 (Station Identification)

Proposed Section 101.213 exempts stations in the private services from station identification requirements, but there is no comparable exemption for common carrier services. This omission appears to be an oversight since neither private nor common carrier service stations are currently subject to station identification requirements,¹⁰ and the Commission has provided no explanation as to why such a requirement should be imposed at this time. AirTouch requests that Section 101.213 be modified to state that "stations in the private and common carrier services are exempt from the requirement to identify transmissions by call sign or any other station identifier."

⁹ Specifically, proposed Section 101.5(a) states that pre-authorization construction and operation is not permissible, "except as provided in paragraph (d). . . ." which permits pre-authorization construction in the private operational-fixed microwave service.

¹⁰ Private services are exempt from station identification under Section 94.105, and there is no Part 21 provision requiring common carrier station identification.

C. **Rules Regarding Assignments and Transfers of Control**

1. **Consummation of Assignments and Transfers**

AirTouch strongly supports the Commission's proposal to extend from 45 days to 360 days the time within which assignments and transfers of control must be consummated.¹¹ Extending the consummation deadline to 360 days will eliminate the need for extension requests (which have become a common occurrence) and the associated burden on carriers and the Commission.¹²

The rules should not be changed to permit common carrier applicants to merely notify the Commission of failure to consummate. Adoption of this practice would result in inaccuracies in the Commission's database. Specifically, upon grant of an assignment/transfer, the licensee of the stations involved would be changed in the Commission's records to reflect assignee/transferee information even though the stations would actually continue to be licensed to the assignor/transferor until consummation. As a result, the Commission's records would be inaccurate and misleading to other carriers and the public.

¹¹ Proposed Section 101.15(e) should be changed, since it still references the existing 45 day deadline. The FCC Consent Form (FCC Form 732) should also be changed to reflect the extended period.

¹² However, a carrier should still be afforded the ability to obtain extensions, if necessary, upon an appropriate showing.

2. **Section 101.55 (Considerations Involving Transfer or Assignment Applications)**

Proposed Section 101.55(a) prohibits the assignment or transfer of microwave licenses prior to the completion of construction of the facilities except in certain limited circumstances. This limitation on assignments/transfers does not exist under the current rules,¹³ and its proposed adoption now, in the context of a proceeding designed to eliminate unnecessary regulations, seems particularly out of place. The Commission has not articulated any reason why more stringent assignment/transfer restrictions are necessary at this time. AirTouch submits that speculation and trafficking can effectively be prevented through close scrutiny of such transactions. Accordingly, proposed Section 101.55(a) should be eliminated.

D. **Miscellaneous Provisions**

Section 101.15(h) (The Annual FCC Form 430 Filing Requirement)

The Commission has stated that a primary objective in this proceeding is to make the rules easier for the public to use and to eliminate

¹³ The language of the proposed rule tracks current Section 21.39(a), a rule which applies only to Multipoint Distribution Service ("MDS") stations. See Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, Report & Order, 8 FCC Rcd. 1444, 1447 (1993) (adopting § 21.39(a) "to further restrict the circumstances in which we will permit the transfer of an interest in MDS applications and conditional licenses prior to completion of construction"). Section 21.39(a) is unchanged by the Notice and will therefore remain applicable to MDS.

redundancy. In furtherance of this objective, AirTouch proposes that the Commission eliminate the annual Form 430 (Licensee Qualification Report) filing requirement for common carrier radio service licensees contained in Section 101.15(h).

The annual filing of FCC Form 430 is burdensome and costly to both the public and the Commission. The Commission has already acknowledged the unnecessary costs associated with this requirement by eliminating the annual Form 430 filing requirement for both mobile services¹⁴ and satellite communications services.¹⁵ Additionally, eliminating this requirement will not hinder the dissemination of licensee information because the Form 494 still requires applicants for new or modified licenses to ensure that a current Form 430 is on file, and the rules require the assignee in a transaction to file a Form 430 along with the assignment application. Thus, the rules already ensure that current FCC Forms 430s are available. The annual filing of the Form 430 is unnecessary and should be eliminated in order to decrease excessive administrative burdens.

CONCLUSION

AirTouch supports the Commission's efforts to simplify and consolidate the rules governing common carrier and private operational-fixed

¹⁴ See Report & Order, 3 FCC Rcd. 6684 (1988).

¹⁵ See Public Notice, Report No. DS-953 (1990).

microwave operations, and believes adoption of the suggestions detailed above would further the Commission's objectives in this proceeding. To the extent the rules are changed, AirTouch requests that the Commission afford microwave licensees sufficient time to incorporate the changes into their operating procedures.

Respectfully submitted,

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